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**FACULTY OF LAW**

**LL.B THESIS**

**THE EFFECT OF BUSINESS LICENSING IN**

**ETHIOPIA THE LAW AND PRACTICE**

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# **EXECUTION OF JUDGMENT AGAINST JUVENILE DELINQUENTS**

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I here by declare that this paper is my original work and I take full  
responsibility for any failure to observe the conventional rules of citation.

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Signed \_\_\_\_\_

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# INTRODUCTION

A person who professionally and for gain carry on any activities shall be deemed to be traders.

A person who either on his own or jointly with others engaged a commercial activity by its nature should have legal license.

License is permission granted by governmental authorities to carry on an activity, which in absence of such permissions would be illegal. Note here that it is not the activity it self which is illegal but it is the exercise of the activity less the permissions which is illegal. Activities which are illegal by them selves for instance trading hashish are not the subject matters of licensing. Activities which are harmful to the public by their very nature are prohibited by law.

However those activities which serve the needs of the public would constitute the subject matter of licensing. The purpose of licensing is regulation. It is interested to regulate the exercise of business activities.

The first chapter of this paper deals in a general fashion, with the definitions, purposes and nature of a license and registration. In addition a reflection is also made on the issue whether licensing should be compulsory or optional.

The second chapter is devoted to the mechanism of acquiring a business license. It deals thoroughly with the requirements that an applicant for a business license needs to satisfy.

In the third chapter a reflection is made on the obligations that must be complied with by a person who come to acquire a business license. A license is granted with obligations that must be complied with by the license so that the validity of his license would be maintained.

The fourth chapter on the other hand deals with the concepts of suspension and revocation of a business license and its effects in the law and practice in Ethiopia. The license's failure to comply with certain obligations provided by law give rise to suspension or revocation.

In Ethiopia prior to the enactment of the commercial registrations and business licensing proclamation No. 67/1997, license for different commercial activities had been given by different government institutions.

Finally, though licensing is interested primarily in safeguarding public interest, it should have to be utilized wisely lest it would not harm private business interests. As a result the legislature has to provide adequate protective devices to safeguard the interest of an individual businessperson from unreasonable and capricious acts of licensing agencies.

# **CHAPTER ONE**

## **1.1 Introduction**

In this chapter this paper deals in general with the definition, purpose and nature of license in Ethiopia. In addition, a reflection is also made on registration and the issue whether licensing should be compulsory or optional.

## **1.2 Business**

### **1.2.1 Definition**

Business in its wider sense is commonly used to mean “right or occasion of making one self busy; that which business, or that which occupies the time, attention or labour of one as his principal concern. This definition is a general one and equates business with an activity in which one is engaged in investing his time and effort. In addition, the activity in which one is engaged in is his primary concern. The above definition however, tells us nothing about the reason why an individual is spending his time and effort in the said activity.

Black’s law dictionary defines business as “employment, occupation, profession, or commercial activity engaged in for gain or livelihood”<sup>1</sup>. This latter definition defines business in a more comprehensive manner. It considers business as a goal oriented activity. Hence, business is an activity in which one is engaged in deducting his time and effort for the purpose of maintaining

<sup>1</sup> Black's Law Dictionary, Bryan A. Garner-English Edition 1990-West Publishing Page 211.  
Business Organization M.J. Mathew-2000, New Delhi, Page 45,451 and Encyclopedia of Britannia

himself or for gaining profits. According to Black's Law Dictionary, therefore, all those activities, which hold the attention of a person and consume his effort but do not either generate profit or enable him to earn something necessary for his livelihood fall beyond the scope of business.

In its "narrower" sense the term business refers to "a commercial, individual or professional activity engaged in for profit."<sup>2</sup> Considered narrowly the term business designates those activities in which one is engaged in for the purpose of earning profits. It does not include all those occupations or employments in which individuals are involved in for the purpose of solely making their daily bread. According to this definition the essential feature of a business is thus profit generation. This idea is reflected in the 1960's commercial code of Ethiopia. The commercial code defines business as an incorporeal moveable property brought together and organized for the purpose of carrying out any of the activities in Art 5 of the code. Art 5 states the persons who professionally and for gain carry on any of the following activities.

Here, too "gain" which is equivalent to "profits" is provided as an essential element of business. The gain concept excludes activities performed for the purpose of one's livelihood from the ambit of business.

From the foregoing discussions we can conclude that, business is an activity in which one has spared his time and effort taking it as his principal concern in order to make profits.

<sup>2</sup> Pro. No 67/1997, Art. 2(2)

### **1.3 Registration**

Any Ethiopian or foreign person or business organization carrying out commercial activities with in Ethiopia shall be registered.

A business person intending to carry out commercial activity before commencing the trade should make application for the registration in the office of the registration indicated in the regulation. It is compulsory to all traders having permanent place of work before they carry out any activities to be registered pro. No. 67/1997 Art 3(3), in the commercial code, too:

- Any Ethiopian or foreign persons or business organization carrying out commercial activities with in Ethiopia shall be registered. (Art 100 of comm. Code)
- Application for registration should contain the following particulars.
  - a) Name of the firm
  - b) Place or principal place of business
  - c) Capital
  - d) Date on which each partner joined the firm
  - e) Names in full and permanent addresses of the partners
  - f) Duration of the firm

### **1.4 License**

The term license is defined in Corpus Juris Secundum as “a right or permissions granted by some competent authority to carry on a

business or do an act which, with out such license, would be illegal” the American jurisprudence in the same way defines license by making special reference to its nature as “a license is in the nature of a special privilege, entitling the license to do some thing that he wouldn’t be entitled to do with out the license”.

Hence, license refers to permission given by some governmental authority to a person for the purpose of caring out business or to do certain acts and a person who wants to conduct a given business or perform certain activities for the exercise of which license is required should have to acquire from the out set permission from the concerned governmental authority. Exercising business less such permission would amount to illegal activity.

However, it must be clear here that it is not the occupation of business by it self which is illegal. It is rather that business for which license is required without securing the permission of the authority concerned which is illegal.

Business which are commonly thought to be harmful in themselves or which historically have been deemed to have no legitimate functions may be prohibited entirely and a fortiori may be regulated by the state.

License is however, concerned with those activities which are useful to the society i.e., which enable the society to satisfy its multidimensional needs. The state through its police powers regulates the conduct of these businesses so that they may not depart from their inherent purpose, i.e, serving the interest of the society.

Businesses or professions serving valuable economic or social purpose may not be prohibited but they may nevertheless be subjected to regulation in the interest of the public health, safety, and welfare, which they are attended with danger or liable to abuse.<sup>3</sup>

It may be asked that if a given business is not harmful in itself and is useful to the public, then why license is required as condition for its exercise? And how can it turn against this public interest?

The requirement of license as a prerequisites for carrying out these useful business claims justification from the nature of business activities themselves. The said businesses, though are inherently harmless, on the other hand are of such a nature that they can be easily abused and as such have a tendency of turning against the public interest. “The main consideration in favor of license ability appears to be the possible tendency of a business to degenerate into a nuisance or its traditional connection with fraud or immorality”. As it has been said earlier on, business basically are interested in securing profits as their primary goal. In the course of pursuing profits they may be tempted to turn to harmful practices.

#### **1.4.1 Nature of a license**

License, being a mere privilege to perform activity, which otherwise would amount to illegal act, does not create any kind of obligation on the authority-granting license. In other words, license doesn't amount to contract or obligation between the licenses.

Pro. No 67 (1997 Art. 26 (1a))  
Business Law, David Kelly 5<sup>th</sup> edition, 2005 Britain Page 516



Although license is sometimes taken as a property, strictly speaking it is not a property and vests the license with not property rights.<sup>4</sup> It is merely a personal privilege.

Moreover, “a license to a person to follow any particular trade or business is not an appointment to office nor does it confer of the powers or privileges of a public officer.

### **1.4.2 Purpose of licensing**

Licensing basically serves two major purposes. They are

- (1) Regulatory function, and
- (2) As a means of revenue generation.

#### **1.4.2.1 Regulatory function**

Before directly getting into examining the different types of regulatory functions which licensing serves, I want to make a brief discussion on the point that, what does regulation through licensing mean?

#### **1.4.2.2 What does regulation through licensing mean?**

In doing so, the state has in mind that before a business person “enters” into the society to carry on a given business, the licensing authority (an organ of the state) ensures the fulfillment of the required professional qualifications or competence of that person to carry on a given business activities. By doing so, the authority screens out unqualified and incompetent persons before they

<sup>4</sup> The const of the FDRE of Eth. Pro. No 1/1995, Art. 40

engage in the business activities they intended. The purpose is to remove potential harms to the public before they are being realized.

The primary legislative thought in licensing is not prohibition but regulations to be made effective by the formal general denial of a right which is then made individually available by administrative act of approval certification, consent or permit.<sup>5</sup>

The above quotation makes it clear that the principal purpose of licensing is not to prohibit a person from exercising a given business activity, it is rather to eliminate. "The most obvious or serious future troubles." That may be occasioned by unqualified or incompetent persons. To make more clear and sensible what has been said above it would be proper to quote the words of George A. Warp. He said the following.

***Licensing means that stand before their government one saying. "I wish to operate a securities exchange." and still another saying "I want to be an air plane pilot. " To each of these people and to others the government replies. "What you propose to do is of such a public importance that it must be regulated in the interests of the common good. If you cannot or will not meet the standards which we prescribe. You may not go a head with your plans<sup>6</sup>. "***

To conclude, "licensing is the administrative lifting of a legislative prohibition". The legislature to achieve its goal of regulation of business which affect the interests of the public puts barriers

<sup>5</sup> Pro. No. 67 (1997) Art. 20

<sup>6</sup> Black's Law Dictionary - Bryan A. Garner English Edition - 1990-Page 938 & 939

against business activities, the administrative organ on the other hand lifts the barrier on condition that the individual has satisfied the requirements for the acquisition of a license to carry on a given business. Thus, in brief it is called regulation through licensing.

### **1.4.2.3 Kinds of regulatory functions**

#### **1.4.2.3.1 License as a device to limit entrance to an activity**

One of the essential features of a competitive market system is that there is no barrier both to buyers and seller to enter into market. This means that individual are left free to engage in any trade or activity they choose provided, however, it is not prohibited by law. In addition it is also generally accepted that competition regulates prices and ensures effective utilization of resources. Because in a competitive market system there are as many buyers as are many sellers. “A market exchange economy relies on ‘competition’ to ensure that resources will be used effectively to satisfy buyers and to protect individual market participants.”<sup>7</sup>

Though this in general might be true, nevertheless, there are certain areas where competitions fails to ensure effective use of resources and protect market participants, particularly buyers. This is observed typically in the case of natural monopoly. The basic nature of natural monopoly is that one producer can effectively and more efficiently provide service to the whole society.<sup>8</sup> On the other hand, if carried on by several producers, then there

<sup>7</sup> Pro. No 67/1997 Art. 26 (1a)

<sup>8</sup> The cons. Of the FDRE- 1/1995 Art. 41

may be wastage of resources and it has been further said the reduction of quality may occur.

Conceptually there are industries in which the nature of the resources that are used in the productions is such that one producer can supply the entire market for the product at a lower real cost (use fewer resources) than can several producers. Since natural monopoly is of such a nature that one producer can effectively supply the whole market, the existence of several producers implies the existence of excess supply. Obviously this results in the reductions of price even below the cost productions because the demand of the market will be satisfied by a single product. Hence the ultimate out come of price reduction will be many of the products will be compelled out of competition and the consumer will be faced with a monopoly. The end result of competition in a natural monopoly situation is, therefore, the birth of a monopoly; i.e. only one seller will control the market.

Further more during competition in a natural monopoly situation, each seller in order to minimize his cost may take a step to reduce the quality of product he is supplying which is prejudicial to the interests of consumers.

The Raison D'etre behind granting monopolistic power in the production of public utilities seems that, firstly, it is believed that this mechanism will serve best the interests of consumers. In other words, public interest necessitates the need for imposing restrictions on entrance into the production of public utility services. In the words of Graner J.F, "sometimes the type of the

activity may be such that it is desirable in the public interest to restrict the number of persons who exercise it...”. Necessity is, therefore, the justification for the limitation.

Nevertheless, the government should have to make sure that those limited number of firms are enough to extend services sufficiently to the whole public. Therefore, as a matter of fact administrative discretion in granting or refusing a license may take into consideration community need and adequacy of existing supply.

At this juncture, it should also be noted that restriction to competition is not in all cases, the sole reason for the imposition of limitation on entrances into business activities. Transmission of electromagnetic waves (broad casting, etc) for example, is licensed not to limit competition but to prevent interference.<sup>9</sup>

In addition, restrictions may also be imposed to keep out of the market certain products, which the government considers unnecessary. This ultimately is designed to discourage the utilizations of those products by the citizens.

“The use of the police power to limit the number of firms proceeds on the assumptions that limiting the availability of certain ‘undesirable’ products will reduce their use.” Restrictions on liquor licensing and cigarette licensing can best be justified on this ground. Through this process the government in the long run wants to minimize the evils, for instance, of drunkardness and lung cancer that may arise from the utilization of such products as alcohol and cigarettes.

<sup>9</sup> Com. Code of Eth, Art. 5

#### **1.4.2.3.2 License as a device of protecting public health safety and welfare**

The other major purpose of licensing is to safe guard the health, safety and welfare of the society at large from various kinds of dangerous business practices. To protect public health, for instance, license is required to practice medicine. To safeguard public safety an architect is required to have license. And to protect the public from fraud a person is required to obtain license before he may act as a real estate broker.<sup>10</sup>

In order to fulfill its mission of maintaining the public health, safety and welfare the government, as it was stated earlier on, sets minimum conditions that must be met by any person who wants to engage in a given business “under its police powers, the state may set up standards to be satisfied by persons who seek to engage in activities that affect the public health safety or welfare.

On fulfillment of such conditions the individual acquires a license and hence is permitted to engage in the activity he wants to carry on. If failed, then he will be prohibited from carrying on the activity intended for lack of competence which is deemed to be dangerous to the public health, safety or welfare.

#### **1.4.2.3.3 The performance of an activity**

The function of licensing does not stop then and there on setting standards that should be satisfied by an individuals who proposes to carry on certain business. The fact that a person has fulfilled all

<sup>10</sup> Pro. No. 67/1997, Art. 26(1/a)

conditions required to get into a given business does not mean that it cannot affect the public health, safety or welfare. Business activities being of such a nature susceptible of being abused call attention for continuous inspection and follow-up.

### **1.5 As source of revenue**

A person on applying for a license is required to pay license fee together with his application. Furthermore, he pays renewal fees annually on renewing his license. Through this mechanism the government raises revenue. The purpose behind requiring payment of fees might be the necessity of payment for the services extended to the individual by the license granting agencies. The revenue can be used to finance such agencies so that they could be self-sufficient.

However, license fees service some times serve as a means of regulation in addition to what has already been said. “License fees may be used to regulate and control the occupation or privilege for which license is granted ... or to raise revenue”.<sup>11</sup> Or it may serve both.<sup>12</sup> The government regulate the exercise of an activity through license fees most of the times when it desires to discourage the consumption of a product or when it wants to limit exercise of an activity. When this is felt by the government it imposes huge amount of license fees and renewal fees. Through this mechanism the government discourage those who want to engage in that specific activity.

<sup>11</sup> Pro. No 67/1997 Art. 25  
<sup>12</sup>

## **1.6 Should licensing be compulsory**

Licensing as a means of regulation is of a recent creation. It has been being utilized as a device of regulation together with an other system of regulation known as system of orders. The system of orders particularly in the United States of America was born as a response to evils born with industrialization and development of modern technologies.

The tremendous growth that resulted from these developments, however, was not attained without some cost. Large organizations sometimes abused their power at the expense of their customers, distributors and competitors. New technologies often passed risks of harm to large number of citizens. Yet traditional institutions of legal control such as courts and legislatures were not particularly well suited to the regulatory needs of an increasingly, complete inter dependent society in the throes of rapid change.

In order to curb this social problem, therefore, an independent institutions was established whose major function is to protect consumers by preventing unfair methods of competition, and unfair or deceptive acts or practice.<sup>13</sup>

In the USA the Federal Trade Commission (FTC) is empowered to issue trade regulation rules and enforce its observance through court adjudication. “The usual penalty resulting from a final decision against the respondent is an FTC - Cease and desist order. This is basically a command to the respondent ordering it to stop,

<sup>13</sup> The Criminal Code of the Federal Democratic Rep. of Eth. Pro. No 414/2004 Art. 719



i.e. cease or desist its illegal behavior. In addition, the commission brings action to protect the consumers, whose interest were harmed by the conduct of unfair practices claiming damages.

The action of the commission is generally based on the general provision of the law commercial, penal code, etc. of the U.S.A.

Following the system of orders another system of regulation, i.e. system of licensing was created in the United States of America. Basically, both systems were established to achieve the same social ends. i.e. to protect consumers from illegal trade practice. In the contemporary world the system of licensing is winning tremendous acceptance to the extent that license are now becoming compulsory.

However certain writers argue that licensing should not be compulsory, it should rather be optional and the system of orders should be taken as the other alternative. Hence, Freud E. states that “the choice lies between administrative orders and administrative licenses.” The above-mentioned writer argue that if, however, individuals wish to obtain license they can do so and on acquiring license they can hold them selves out to the public as licensed traders. And the consumers can choose freely between licensed and unlicensed traders.<sup>14</sup>

These writers criticize compulsory licensing mainly on the ground that since many sellers will be excluded from market for failing to satisfy the standards required for the acquisition of license there will be few sellers in the market. On the other hand, licensed

<sup>14</sup> Pro. No. 67/1997 Art. 21

sellers are required to pay on acquisition of license fees and renewal fees. This is common else where in the world and hence in our country. (in Ethiopia).

The cumulative effect of these will be that there will be an increase of price of goods which have not been the case had license been not made compulsory. The proponents of compulsory license on their turn respond that this cost should be paid to avoid greater evils.

Nowadays, however the prevailing thought is that opts for compulsory license.

### **1.6.1 Reasons For making license compulsory**

#### **1.6.1.1 No second choice theory**

The system of orders sellers on competition and general laws to safe guard consumers from unfair trade practices. This is based on the assumption that if a consumer is defrauded by one seller by can on the next time resort to another seller. And injuries which cannot be corrected in this way can be made good by making resort to general laws.

The challenge to this system is that what if the consumer had no second chance, for instance, what if he is not around i.e. died as a result of the fraud committed on him? In addition, it is argued that compensation may not be adequate to rectify the injury sustained. “One does not rectify death from the consumptions of adulterated

foods or the performance of an operation with a methyl alcohol sold as grain alcohol easily corrected.”<sup>15</sup>

Taking these situations in to consideration the state requires compulsory license so that it could prevent in competent sellers and fraudulent practices of traders.

#### **1.6.1.2 The need for effective and expedient mechanism of regulation**

One of the failures of the system of orders is it lacks expediency, i.e., it goes through the normal process of court adjudications to enforce its purposes which is most of the times a slower process.<sup>16</sup> In addition courts sometimes may not adequately resource issues, which are highly technical which most of the times are related with certain professions. Furthermore, the maximum action taken by this system is to pass, order to the dependent to stop his illegal practices and to compensate the consumer.

The system of licensing, however, firstly, ensures the competence of individuals before they start to engage in business activities, secondly, if an individual fails to conduct himself according to the prescribed rules of performance, then either his license will be suspended or revoked. “The unusual effectiveness of licensing as an administrative technique results from the ever present possibility of revocation which ensures compliance with licensing

<sup>15</sup> The Criminal Code of the FDRE of Eth, Art 692

<sup>16</sup> The Civil Code of Eth, Art 1792

regulations in the vast majority of cases without formal proceedings.”<sup>17</sup>

The injured individual, moreover, can bring action against the unscrupulous or incompetent seller for compensation on the basis of general laws.

### **1.6.1.3 Natural Monopoly Theory**

The system of orders is primarily interested to promote free competitions because, it has been believed that interests of consumers can best be protected through competition as it was mentioned earlier. However, this does not hold true especially in the provision of public utilities. This defect of competition can then only be effectively addressed through licensing.

To sum up, though it cannot be said that the system of licensing is absolutely perfect, nevertheless one can safely say that it is the best technique of regulations.

Where safety, health and morals are involved, where private activities trench upon conservation public resources or where nationalistic interests are to be safeguarded the license always suggests itself a ready means of making regulations more effective if only as measure pending the discovery of substantial principles of regulations.

<sup>17</sup> Pro. No 67/1997, Art. 28

## **CHAPTER TWO**

### **2. Acquisition of business/trade license under proc. No**

**67/1997**

In this chapter it is devoted to the discussion of the mechanism of acquiring a business license. And also it deals thoroughly with the requirements that an applicant for a business license needs to satisfy.

#### **2.1. Who shall apply for a license?**

The registration and business licensing pro. 67 /1997 provides that any person engaged in a commercial activity shall submit to the appropriate authority an application for a business license by completing the application form prescribed by the regulation.<sup>1</sup> Similar provision is also provided under the article dealing with the scope of application of the provisions of the proclamation. It deals with business licensing. It reads "the provisions of this proclamation relating with business license shall apply to any person engaged in any commercial activity other than those specified under Art 20(1) of this proclamation".<sup>2</sup> Hence, the proclamation makes it clear that business licensing is a compulsory requirement.

Therefore any person who is engaged in any commercial activity is required by law to have a license. In addition though the proclamation speaks about a person who has already been engaged in a given commercial activity, it is also at the same time meant to apply to a person who wants to engage on a given

<sup>1</sup> Pro. No 67/1997 Art. 20(1)

<sup>2</sup> Ibid - 1

commercial activity. As a result, both persons, i.e., one who is engaged in and anyone who wants to engage in a given commercial activity are required to have business licenses. The proclamation defines the phrase... "Commercial activity" as "any activity carried on by a business person."<sup>3</sup> Art 2(2) of the proclamation states that a businessperson is any person who professionally and for gain carries on any of those activities specified under Art 5 of the commercial code. The only new addition brought in by the proclamation is that which says "...any other services or activity which an individual carries on and which is declared as a commercial activity by the government."<sup>4</sup> This general statement widens the ambit of the term commercial activity when compared with Art 5 of the commercial code. On the basis of the proclamation the government, therefore, provides by regulation additional services or activities which are deemed to be commercial.

However, the phrase any commercial activity as employed by the proclamation is qualified by Art 20(1) cum 3(1).<sup>5</sup>

The proclamation permits regional government to establish a floor capital below which no licensing is required. It provides that, regional governments may, by taking in to consideration the objective conditions of the locality, exempt small-scale businesspersons from obligation to obtain a business license by setting a floor capital. In addition the proclamation does not govern the issuance of license for certain commercial activities provided under Art 20(1).

<sup>3</sup> Ibid - Art. 2(3)

<sup>4</sup> Ibid - Art. 5

<sup>5</sup> Ibid - Art 20(1) Art. 3(1)

The purpose behind Art 3(1) of the proclamation seems that taking the circumstances surrounding small scale business persons i.e., the fact that they live a hand-to-mouth way of life, to require them to have business license will be to impose a burden or obligation on them,<sup>6</sup> because a licensee is required to pay firstly, a license fee; and secondly, a renewal fee which is paid annually. In addition, most of them do not possess permanent places of business which makes difficult continuous inspection of business activities by the appropriate authority pursuant to Art 35 of the proclamation. However, viewed from the other angle, i.e. from the objective of licensing to protect the public from unfair business practices Art. 3(1) seems sound. Because Art. 3(1) business license shall apply to any person engaged in any commercial activity.

The term "any person" under Art 3(1), or under Art 22(1) could be a physical or legal person.<sup>7</sup> Moreover, it could be a foreign or domestic physical or legal person.<sup>8</sup>

## **2.2. Power to issue business license**

Under the old laws of licensing, licenses had been issued for different commercial activities by different government institutions.

The licensing institutions in Ethiopia are many and varied. Of these, the Grain Board, the Coffee Board, the Meat Board, the ministry of commerce and trade, Industry and Tourism, the Road Transport administration, the National Bank of Ethiopia,

<sup>6</sup> Ibid - Art. 3(1)

<sup>7</sup> Ibid - Art. 22(1)

<sup>8</sup> Ibid - Art. 22(1) - 2

The wild life conservation, the ministry of justice, the ministry of public health and arguably the municipality of Addis Ababa.<sup>9</sup>

The legislature under the new proclamation, however, came up with a new approach that business must be licensed in a consolidated manner by one ministry, i.e. ministry of trade and Industry and its Regional Bureaus. Nevertheless, there are certain exceptions owing to the particular nature of a given business where license should be given by other governmental institutions than ministry of trade and industry and the relevant regional bureaus.<sup>10</sup>

To this effect the proclamation provides the exceptions under Art 20(1). There are seven commercial activities, which have to be licensed by other government institutions.<sup>11</sup> Prospecting and mining of minerals; various water works services, not including water works, banking and insurance services, air transport service and other aviation service; commercial activities. Involving the use of radio active materials and radiation emitting equipment, repairing and maintaining of arms and firearms and sale of explosives; and trade in tobacco and products.

Art 20(2) provides that without prejudice to the generality of sub Art (1) of this article, an appendix listing the commercial activities for which the ministry shall issue business licenses is attached to this proclamation. The appendix lists the various business activities for which, license are to be issued by the ministry of trade and industry. Business licenses issued by the

<sup>9</sup> Ibid - 3

<sup>10</sup> Ibid - 4

<sup>11</sup> Ibid - Art. 20(1)



Bureau shall be determined by regulations to be issued by the regional council.<sup>12</sup>

### **2.3. Requirements to acquire a business license**

There are pre-licensing obligation or condition which the applicant for a license needs to satisfy before he acquires a license. Under this heading I will discuss each of them separately.

#### **i. Compliance with directive issued by the relevant government institutions**

Pursuant to the enactment of the commercial registration and business licensing proclamation, as it has already been stated, license for various business activities used to be issued by different government institutions.

The proclamation, however, changes this practice and empowers, the appropriate authority, i.e., the ministry of trade and industry and its regional bureaus to be the only organs for issuing business license save for certain exception. According to the old laws of licensing each concerned government institution lays down the detailed requirements that must be satisfied by a given person who wants to engage in a given commercial activity and on the fulfillment of those requirements they had been issuing licenses.<sup>13</sup>

Pursuit to the proclamation, however the government institutions who previously were authorized to grant license are now authorized only to issue directives which provide the

<sup>12</sup> Reg. No - 14/1997

<sup>13</sup> Com. Code of Ethiopia - Art 5

requirement that should be fulfilled by the applicant and the power to issue license is reserved to the ministry of trade and industry and its regional bureaus. The requirements to be satisfied for licenses to issued for commercial activities covered by this proclamation shall be defined in the respective directives issued by the relevant sectoral government institution. This is to mean that the applicant has to show evidence to the ministry that he has complied with the directive provided so that a license will be issued to him.<sup>14</sup>

Hence, acquisitions of business license is conditional on the fulfillment of certain requirements.<sup>15</sup> "A political body that has the authority to forbid the exercise of a particular privilege completely, may, in general authorize the exercise of the privilege by issuing a license granted on conditions."<sup>16</sup>

## **ii. Certification of professional qualification**

Where the particular commercial activity for which license application is made requires that the applicant must hold specific professional qualifications or competence, the applicant is required to show to the appropriate authority the certificate of professional qualification of competence issued by the relevant government institution. And the relevant government institution is imposed with a duty to issue the required certificate up on ascertaining the qualification or competence of the applicant. Depending on the nature of the activity for which a license is sought, this may be one of the most important obligation an applicant must satisfy and it aims at avoiding from the outset

<sup>14</sup> Directive - No 4/1995 - page 1-34

<sup>15</sup> Ibid - 4

<sup>16</sup> Pro. No. 67/1997 Art. 20

the roots of social ills which may result from business practices by unqualified or incompetent individuals.

Therefore, the licensing legislation may require the applicant to furnish evidence of this professional fitness to engage in the contemplated activity.<sup>17</sup>

Note, however, that this obligation is not that which must be satisfied by all types of applicants. There are certain commercial activities for the exercise of which no certificate of professional qualification or competence is required. Therefore, this requirement is dependent on the particular nature of a given commercial activities.<sup>18</sup> It is further clear under Art 22(2) as follows; on the basis of the requirements set by the directives of the relevant government institution for the commercial activity for which the license is applied for, the applicant shall submit as appropriate, all or parts of the information indicated below together with his application referred to under sub Art(1) of this article.<sup>19</sup> (Emphasis added)

Furthermore, qualification or competence requirement must be reasonable. So the institution should not require unreasonable requirements that will prevent the applicant from engaging in a given business activity for the exercise of which license is sought for.

### **iii. Submission of statements of government institutions**

The other most important obligation of the applicant is that, he has to comply with regulations dealing with health and sanitary

<sup>17</sup> Reg. No 13/1997 A-5

<sup>18</sup> Com. Code Art. 5

<sup>19</sup> Ibid Art. 22(2)

condition, environmental and safety measures laid down by the government concerning a given commercial activity.<sup>20</sup> As has already been mentioned a number of times the government as the guardian of the public establishes from time to time different regulation and directives with the view to protect the public from harmful practices dangerous to its health, safety and environment. One way of enforcing this objective towards its goal is to compel commercial persons to comply with these regulations through the medium of licensing. Consequently, the applicant may be required to produce the statements of the relevant government institution, which ascertains his compliance with regulations dealing with health and sanitary conditions, environmental protection and safety measures. On the other hand this governmental institution is duty bound to give its statements about those facts.

#### **iv. Verification by the applicant as to his compliance with other requirement**

Art 22(2) requires the applicant to submit to the appropriate authority a statement signed by him regarding his compliance with all other requirements pertaining to the business license.<sup>21</sup> This could serve as a warranty for the appropriate authority. We notice here that the list of obligations provided by the proclamation is not an exhaustive one and there still remain other obligation that an applicant must comply with, which are provided elsewhere in other laws, for instance, there is a requirement of registration which is laid down under the commercial registration and business licensing council of

<sup>20</sup> Com. Code of Ethiopia Art. 5

<sup>21</sup> Ibid - Art. 22(2) Art. 22(1)

ministers regulation N° 13/1997. Therefore, the applicant is obliged to submit a signed statement in his application that he has complied with all the other requirements needed for acquisition of a business license in the area he/she is intending to obtain one.

Regional governments can, however, set by regulation the conditions under which the requirements mentioned above from/are to be submitted.<sup>22</sup> In setting up these conditions regional government should take into consideration the business and local conditions. One should note here that the proclamation authorized regional governments to determine by regulations as it will be convenient to them only the conditions of submitting information, but not the requirement and conditions necessary for acquisition of a license. The requirements provided in the proclamation must be necessarily satisfied by all applicants.

#### **v. Certificate of registration**

The commercial code provides us with a list of persons to whom the obligation to register shall particularly apply.<sup>23</sup>

These are:-

1. Every individual trader
2. Every business organization
3. Every commercial business organization which has its head offices abroad or branch in Ethiopia.
4. Every Ethiopian public enterprise, industrial or commercial.

<sup>22</sup> Reg. 14/1997

<sup>23</sup> Com. Code of Ethiopia Art. 100

5. Every commercial representative or agent of states, foreign public enterprises or undertaking carrying out business in Ethiopia.

The obligation to obtain license is not a substitute a traders obligations to register.<sup>24</sup> Hence any physical person Ethiopian or foreigner, legal person domestic or foreign company, or domestic or foreign public enterprise who is engaged in any commercial activity in Ethiopia is required to be registered so that a business license may be granted to it.<sup>25</sup> So, license is a secondary process. And he must produce in two copies his registration certificate together with his application.<sup>26</sup>

Where the applicant is a foreigner considered as a domestic investor he is required to submit in two copies his investment permit and resident permit.<sup>27</sup> Where the applicant is a business organization having members who are foreigners, it shall together with the application, submit, in two copies memorandum of association and articles of association or contract of partnership and a recent passport size photograph of the manager of the business organization.<sup>28</sup>

Where the applicant is a public enterprise established by the federal government, it shall, together with the application, submit, in two copies a copy of the law under which it was established and latter of appointment of its manager.<sup>29</sup>

<sup>24</sup> Ibid - 7 Art.5

<sup>25</sup> Pro. No 67/1997 Art. 21

<sup>26</sup> Ibid - 8 Art. 22

<sup>27</sup> Investment Pro. No 280/2002 Art. 2(10)

<sup>28</sup> Com. Code of Eth. Art. 210

<sup>29</sup> Ibid Art. 290 (manager)

## **vi. Fees**

Finally, the applicant is required to pay fees for issuance of business license.<sup>30</sup> Fee is a price paid for the services rendered by the institution issuing the business license. Schedule 'A' of the regulation deals with the amount of fees paid for commercial registration and business licensing.

### **2.4. Issuance of business License**

License issuance is one of the many functions of administrative agencies. In order to discharge their functions they are endowed with discretionary powers. However, the exercise of these discretionary power is not absolute. The need to protect private rights imposes limitation upon the exercise of the discretionary power of the administrative agencies. This in other words means;

*There is the necessity of safeguarding the interest of individuals from gross errors of judgment, overzealous extensions of authority, arbitrariness and oppression by particular offices, as well as from whims of public opinion recklessly disregardful of long-established and socially-beneficial private rights.*

The objective of licensing is to prevent antisocial conduct from occurring by restricting participation in the licensed activity to qualified personnel. In spite of this, however, the system must be designed wisely lest it may not gravely hurt individuals by inhibiting them from pursuing the business of their choice.

As a matter of fact, therefore, if the process of selecting licenses is to be discharged intelligently and if those seeking to engage in the licensed business are to be treated fairly, the licensing

<sup>30</sup> Ibid Art. 22

agency must be fully informed concerning applicants' qualifications.<sup>31</sup> Hence, we need to inquire here that how can the licensing agency achieve this end? What procedure should it employ?

#### **2.4.1. Hearing - A Method For Securing Information**

Acquiring the necessary data enables the administrative agency to base its decisions, i.e., to issue or not to issue a license, on substantial evidence. This intern serves dual purposes, firstly, it helps the agency to achieve its goal of protecting the public, secondly, it gives chance to the applicant so that he would present all the necessary evidences that are required of him to acquire a license and in this way the rights of the applicant will be safeguarded. "The essential characteristics of hearing are receipt of testimony opportunity for cross-examination, transcription of the testimony in a record and decision on the basis of the record." Through the mechanism of hearing the applicant, therefore, is given a chance to present witnesses, cross-examine his objectors and require the agency to give him decision on the basis of the record. However, this is not so in Ethiopia.<sup>32</sup> The agency on the other hand will have the opportunity to cross-examine the witnesses and require the applicant to make clear pointes which are vague.

However, there is no unanimity in legislative provisions or administrative polices concerning the hearing procedure on the process of issuing of licenses.<sup>33</sup> Some statutes for instance, are silent and on the contrary other statutes explicitly provide the

<sup>31</sup> Ibid - 11

<sup>32</sup> The Civil Code of Ethiopia - 1960 (hearing)

<sup>33</sup> Pro. No. 67/1997 Art. 21



necessity of hearing in license issuance. Nevertheless, the bottom line should be that the agency must employ a means that will enable it to arrive at a reasonable decision. In fact there is no public policy that prevents the agency not to utilize the mechanism of hearing.

The failure specifically to require a hearing should be construed to mean just that: the licensing agency is not required to give hearing. In the absence of some specification of a legislative purpose to prohibit hearings the sound approach for the administrator is that the legislative delegation power to make determination carries with it the power to use every reasonable procedure for reaching an intelligent decision.

Despite the fact that hearing services as an essential tool for ascertaining facts, it should be noted that hearing is not always necessary. The licensing agency may obtain sufficient information through other mechanisms. One reason frequently given for the administrative decision to deny hearings in the issuance process is that hearing, are unnecessary where thorough investigation have been conducted by the agency. An investigation is a useful procedure for acquiring and verifying information.

In addition the application of the applicant may disclose on the face of it facts that justify summary denial. Here again hearing becomes obviously unnecessary. Hence, to finalize the discussion, there is no need to stick to the hearing procedure, on the other hand the licensing agency should not arbitrarily refuse to utilize the procedure of hearing. It rather should select wisely

and with due care a method, which serves its purpose best under a given situation.

When we resort to the Ethiopian case, the ministry of trade and industry neither conducts a hearing nor makes an independent investigation in license issuance process. It performs basically clerical works. That is to say, depending on the application of the applicant it checks the presence of required certificate of professional qualification or competence verifies the statements of the concerned government institution as to the compliance of the applicant with the health and sanitary conditions, environmental protection and safety measures attached to his commercial activity and in general the fulfillment of other requirements discussed in this chapter. The ministry will issue a business license on the fulfillment of the above mentioned requirement and the requirements stated here in under form 1-5 to:-

1. The commercial activity intended to be carried on by the applicant, is not prohibited by law.<sup>34</sup> This provisions is a broad one and generally refers to any type of activity prohibited by the government. For instance, trading of narcotics is prohibited by the criminal code. Hence the agency would reject an application for a license to exercise trading of narcotics.
2. The applicant has an investment permit where the applicant is foreign investor. This has already been dealt previously in this chapter.

<sup>34</sup> Com. Code of Eth. Art. 5

3. The applicant has a residence permit and an investment permit, where the applicant is a foreign national who wishes to be considered as a domestic investor.<sup>35</sup> This is again discussed earlier on in this chapter.
4. Other conditions provided by the regulation are satisfied by the applicant.<sup>36</sup> This refers to those requirement discussed previously such as registration certificate and photographs.

One can note that the fact that ministry of trade and industry is authorities to perform clerical functions. The applicant will be conducted by the concerned government institution which are empowered to issue professional or competence certificate and required to give statement. And also as to compliance of applicant with the health and sanitary conditions environment and safety protection measures on the basis of the directives they enact laws.

The ministry of trade and industry shall issue the business license applied for ascertaining the fulfillment of all the necessary requirements within five working days upon payment by the applicant of the appropriate fee prescribed in the regulation.

## **2.5. Rejection of the application**

Licensing agency on being satisfied that the applicant does not qualify for the business license on the ground that he has failed

<sup>35</sup> Investment Pro. No. 280/2002 Art. 16(2)

<sup>36</sup> Pro. No 14/1997

to meet the legal requirements, will reject the application. And it notifies the applicant the reasons for the rejection in writing.

Therefore, this remedy is readily available to an applicant whose applicant has been unreasonably rejected by the ministry of trade and industry. Nevertheless, up to the preparation of this paper, there is no practical case on this issue on the basis of the new proclamation;

## **2.6. Remedy for the applicant**

### **2.6.1. Judicial review**

There may be such a possibility that the licensing agency may act arbitrarily and reject the application or refuse unreasonably to issue the license.<sup>37</sup> Against these dangers the judicial veto presents the chief defense. However, the proclamation has no provision dealing with the possibility of appeal from the decision of the ministry of trade and industry to regular courts. Furthermore, there is no law in Ethiopia dealing with the issue of judicial review of administration agencies.

The concept of judicial review of legislative and executive acts is not incorporated in our existing laws. We do not find any provision in all pieces of legislation's, which indicates for the maintenance of judicial review. However, if we see it from the practical points of view courts can review the act of... government agencies.

<sup>37</sup>Pro. No 67/1997 Art. 10

Hence an applicant whose license application has been rejected without a justifiable reason can appeal to a court for judicial review.

However, the scope of judicial review by courts should be limited to ascertaining whether the agency based its decision on reasonable grounds. The function of the court in this case is not to exercise an independent judgment but to determine whether the administrative decision is reasonably supported by substantial evidence or is unreasonable, arbitrary or capricious.

Therefore, this remedy is readily available to an applicant whose application has been unreasonably rejected by the Ministry of Trade and Industry. Nevertheless, up to the preparation of this paper, there is no practical case on this issue on the basis of the new proclamation.

## **2.7. Consequences of carrying on business without a valid business license**

It is prohibited under the proclamation to carry on any commercial activity without license save under this exceptional circumstances. Where a person is found engaged in a commercial activity without a valid business license, he is subject to the following sanctions.

The ministry will order the closure of the business of the person concerned,<sup>38</sup> but it has to make its decisions on substantial evidences.

<sup>38</sup> Pro. No 67/1997 Art. 28

License, he is subject to the payment of fines equal to double the revenue estimated to have been earned by him during the period of time he operated the business without a valid business license and, with imprisonment from 3 up to 5 years.<sup>39</sup> If, however, there are other severe penalties provided by other laws then the latter will be applied.

Moreover, if the person obtained a license by supplying false information, then he shall be punished with fines equal to double the revenue estimated to have been obtained by him up to the time when it was discovered that he has been licensed using false statements and with imprisonment from seven up to ten years.<sup>40</sup>

In addition, where a person obtained a business license by giving bribes, he shall be punished with imprisonment from ten to fifteen years and fines from birr 3,000.00 up to 5,000.00.<sup>41</sup>

<sup>39</sup> Pro. No 67/1997 Art. 46 (1)

<sup>40</sup> Pro. No. 67/1997 Art. 46 (2)

<sup>41</sup> Pro. No. 67/1997 Art. 46(3)

## **CHAPTER THREE**

### **Introduction**

In this chapter a reflection will be made on the obligation that must be complied with a person who come to acquire a business license. A license is granted with obligation that must be discharged by the license so that the validity of his license would be maintained.

### **3. Maintenance of business license**

A license endows a person with a privilege to exercise a given commercial activity, which in the absence of such license would have been illegal. However, this does not mean the a license is free of any legal duties once he has acquired a license as acquisition of a license is subject to the fulfillment of certain requirements, the “maintenance” or the “validity” of a license is also subject to the observance of certain rules and regulation. Through the requirement of licensing the legislature is interested to keep out unqualified persons from entering into a given business activity. Once licenses have been issued, licensees will be required to comply with certain rules and regulations designed to regulate the licensed persons to keep on acting within latitudes they are allowed to function. Failure to comply with any of these rules and regulations will “invalidate” the license.

Therefore, a license in order to maintain the validity of his license is obliged to comply with different obligations. The legislature discloses its intention on this point by providing expressly as, “a business license issued pursuant to Art 23 (1) of this proclamation shall be valid unless canceled on the grounds

specified under Art 28 (1) of this proclamation and as long as it is renewed”.<sup>1</sup> Council of ministers regulation moreover, imposes additional obligations on the license by providing that:-

Any person who has a business license may carry on any commercial activity so long as such activity is within the scope of the field of activity for which the license is issued and he abides by the prohibitions and restrictions imposed by the provisions of sub arts (2), (3), (4) n (5) and (6) of this article and other laws.<sup>2</sup>

Hence the license in order to maintain the validity of his license must:-

- 1) Renew his license
- 2) Comply with obligations the breach of which entail the revocation of his license.
- 3) Comply with prohibitions and restriction imposed on him by the proclamation and other laws. Now we will discuss each of these obligation under separate headings: -

### **3.1 Renewal of business license**

#### **3.1.1 Terms**

A license holder should renew his license every year six months after the expiry of the budget year in which the license has been issued or renewed.<sup>3</sup>

<sup>1</sup> Pro. No 67/1997 Art. 28(1)

<sup>2</sup> citedet note 1 Art. 2,3,4,5

<sup>3</sup> Citedet note 2- Art. 28



The Ethiopian budget year runs from Hamle 1 to Sene 30. The license, therefore, has to renew his license between Hamle 1 to Tahsas 30. If, however, the license has failed to renew his license with in these six months three extra months running from Tir 1 to Megabit 30 are given to him to renew his license under the pain of penalty, which is equal to Birr 2,500 and in addition to birr 1,500 per month (for 6 month) of the renewal fee for each month of delay.<sup>4</sup>

Example

Annex - A

A/A City Addis Ketma Trade and Industry

Renewal - Penalty

| No    | Month     | Payment per month | Year       |             |
|-------|-----------|-------------------|------------|-------------|
|       |           |                   | 1999       | 2000        |
|       | • Tir     | 2,560             | 80 persons | 184 persons |
|       | • Yekatit | 4,060             | 38 persons | 53 persons  |
|       | • Megabit | 5,560             | 16 persons | 27 persons  |
|       | • Meyaza  | 7,060             | 3 persons  | 4 persons   |
|       | • Genbot  | 8,560             | 4 persons  | 5 persons   |
|       | • Sene    | 10,060            | 3 persons  | 6 persons   |
| Total |           |                   | 144        | 282         |

- Private individual customer penalized

### 3.1.2 Renewal fee

A license is renewed on payment of renewal fee. It is provided that where the ministry finds that the application, i.e., the application for renewal, is complete is shall renew the license

<sup>4</sup> Pro No. 376/1996 Art. 8/3

with in five working days upon payment of the appropriate fee. The amount to be paid by the license for renewal is prescribed in schedule “A” of the regulation and is calculated on the basis of the capital of the license.

The regulation in addition provides both the minimum and the maximum fee payable on renewal. It provides that for issuance or renewal of business license (based on the subscribed or authorized capital) up to birr 10,000 (ten thousand) amount of renewal fee payable is birr 60 (sixty).<sup>5</sup>

### **3.1.3. Condition for renewal**

Before the ministry of Trade and Industry renews the license, the license is required to satisfy certain preconditions. A statement regarding the payment of income tax and municipal services issued by Inland Revenue authority and from the finance bureau as may be appropriate. The license therefore, prior to requiring renewal of his license, he has to pay his income tax, and in addition must pay fees for services rendered to him by the municipality, and he is required to produce the statement of the inland revenue authority if he is under the jurisdiction of the federal government or the finance bureau of respective regions if he is under the jurisdiction of any of the regional governments.

Here renewal of a license in a way serves as a mechanism of enforcing a businessperson to pay his income tax in due time. Of course, this is true especially where the commercial activity, which a person carries on, is subject to licensing. i.e. is not exempted by the floor capital requirements set by the regional governments.

<sup>5</sup> Pro No. 67/1997-Art 25- SCHEDULE - A

The licensee submits to the ministry the said statements. i.e., statements regarding the payment of income tax and municipal services in two copies. In addition, the license must submit in two copies to the ministry the appropriate license renewal application form prescribed in schedule “C” of the regulation. The ministry having made sure that the applicant has complied with all the above-mentioned requirements, it shall renew the license within five working days. A renewal has the effect of making the license holder comply with other obligations the failure of which may result in suspensions or revocation of his license.

### **3.2. Rejection of application for renewal**

Art 20(4) of the proclamation provides that where the ministry rejects the application submitted to it pursuant to sub art (2) of the same article it shall notify the applicant within five working days of the reasons of rejection<sup>6</sup>. Now the issue that would inevitably be raised here is that what would be the reasons of rejection of an application for renewal? From the outset there is no doubt that the ministry will reject an application, which does not completely fulfill the conditions stated above for renewal of a license. However, we must inquire here that should the reasons of rejection be limited only to the conditions provided under Art 20 of the regulation, or could there be some other reasons of rejection?

According to the opinion of this writer the reason of rejection of a renewal application should not be restricted to those conditions stated under Art 20 of the regulation, but rather should be

<sup>6</sup> Pro No. 67/1997 Art. 20/4

construed broadly and may include as well other reasons that those provided under the said article.

For that matter the grounds that may justify the suspension or revocation of a license may be taken as legitimate grounds for rejecting an application for renewal. For instance, if the ministry has proved that the license has failed to supply accurately and on time the information requested by the appropriate authority<sup>7</sup>, or has become bankrupt, or it has found that the licensee has obtained his license by supplying false information, then the ministry will unquestionably reject the renewal application of the license.

### **3.3. Effect of failure to renew a business license**

Failure to renew a business license entails a very serious consequence. The proclamation provides that:

The appropriate authority may cancel (revoke) a business license where the holder there of has failed to have his license renewed pursuant to Art 25 of this proclamation for a reason other than that a force majeure as defined by Art 1792 of the civil code.<sup>8</sup>

It follows that, the licensee, unless he succeeds in proving that he has failed to renew his license as a consequence of force majeure, failure may entail the revocation of his license.

The appropriate authority, however, must follow certain procedure prior to revoking the license. It is provided under Art 8(3) of the proclamation that the appropriate authority before deciding to cancel the license for the reasons specified in sub Art

<sup>7</sup> Pro No.67/1997 Art. 27

<sup>8</sup> Civil code of Eth. Art 1792

1 of this article shall require the license holder by a letter sent to his registered address or as may be necessary by any mass media, to submit his written opinion in the anticipated cancellation of the license.<sup>9</sup> In other words, the license must with in thirty days submit his opinion on the anticipated cancellation so that his license may be saved from the anticipated revocation.

Nevertheless, where the license holder has not submitted his opinion with in thirty days from the day the letter was received by him, or was called through mass media or where he has failed to renew his license for reasons other than force majeure, then the appropriate authority shall revoke the license.<sup>10</sup>

Example. Annex - D

- Ato Tekelle Gemal - Health Problem has been taken as a force majeure action.

### **3.4. Effects of rejection of application for renewal of a license**

Both the proclamation and the regulation do not provide a time limit with in which the license whose application for renewal has been rejected must rectify the fault he committed and reply. But generally where the license fails to correct his faults within a reasonable period of time, then it should be considered as if the licensee has failed to renew his license and that ultimately will give rise to revocation of license. Nothing has been provided either in the proclamation or in the regulation as to whether the

<sup>9</sup> Pro No. 67/1997 Art. 28

<sup>10</sup> Pro No.67/1997 Art. 28/1f

ministry could suspend a license at times when the license fails to rectify his faults causing rejection of the application for renewal. Revocation results in the permanent closure of the business of the licensee.<sup>11</sup> Therefore, rejection of an application for renewal of a license may have the effect of preventing the licensee from exercising his business activity. This happens when a license whose application for renewal is rejected and the licensee fail to rectify his faults justifying the rejection subsequently; and as a result the ministry revokes the license pursuant to Art. 28(1)(f) of the proclamation.

### **3.5 Remedies to the licensee**

A person whose license has been revoked due to his failure to renew his license must wait for a year and after he can apply for a license. This also applies to a person whose application for license renewal was rejected and who failed to rectify his faults within a reasonable period of time, and as a result whose license was revoked.<sup>12</sup> In addition, it also seems reasonable that the ministry will have to ascertain the fulfillment of other requirements necessary for the acquisition of a license.

The proclamation as well as the regulation provides nothing about the actions that should be taken by the licensee upon rejection of his application for renewal. However, it is reasonable to argue that the applicant's license can be renewed provided he rectifies his faults.

<sup>11</sup> Pro No.67/1997 Art. 28/3

<sup>12</sup> Pro No.67/1997 Art. 28(4a)

### **3.6 Obligations the non compliance of which may entail revocation**

#### **Introduction**

The license holder must comply with rules and regulations that are laid down by the proclamation so that he may “maintain” the validity of his license. Non-compliance with these rules and regulations would result in the revocation of the license, which has a very disastrous effect. Revocation prevents the license permanently from carrying on the commercial activity; the license for the exercise of which has been revoked.

The reasons that may entail revocation are provided under Art 28(1) of the proclamation. But this writer is not intended to discuss them right here. Because a thorough discussion on revocation is provided in chapter four of this paper. Presently, however, we should have in mind that by avoiding the root causes of revocation the license can avoid revocation and consequently “maintain” the validity of his license.

### **3.7. Obligation to comply with other prohibitions and restrictions**

The licensee is further required to observe other prohibitions and restrictions, which are provided by the regulation and by other laws. To this effect the regulation states that “any person who has a business license may carry on any commercial activity so long as such activity is within the scope of the field of activity for which the license is issued and he abides by the prohibitions

and restrictions imposed by the provisions of sub Articles (3),(4) and (5) of the article and other laws (emphasis added).<sup>13</sup>

The license holder therefore, may validity carry on the commercial activity of his choice only on condition:

1. That his activity squarely falls within the scope of the field of activity for which the license is issued. As a result, a person who holds, for instance, an import license cannot carry on an export trading with that same import license.
2. That he abides by the prohibitions and restrictions imposed by the following provisions.

A. Article 21(2) of the regulation provides that any business person shall within the scope of the licensed commercial activity carry on different activities in separate places or premises where carrying on such activities at the same place on premise endangers public health and safety, or property. The imposition of this obligation on the license logically flows from the objectives of the legislature to safeguard the health, safety and property of the public.

Nevertheless, there is discrepancy between the Amharic and the English versions of this sub article. Because the English version refers in general to health and safety or property of the public at large. However, the Amharic version says, “betetekamiw hizb” which means consumers. However consumers are treated separately under Art 21(3)(a) of the

<sup>13</sup> Pro No.67/1997 Art. 28, sub 3,4,5.



regulation. The Amharic term “Betetekamiw” is used in both sub articles i.e. sub 2 and sub 3(a) while the English version used the term “public health and safety, or property” in sub art 3(a). As a result the English version seems to be more reasonable and in order to give effect to both sub articles we need to follow the English version though the Amharic version is the authoritative one.

B. Art 21(3)(a)(b) provide that no business person shall:

a) Entail damage to the consumer or consumers.

b) Give rise to conflicts of interest Sub **art 3(a)**

aims at protecting the interests of consumer or customers. Damage to consumers or customers may occur, for instance, when the licensee sells in the same premise food items and poisonous chemicals.<sup>14</sup> Sub art 3(b) on

the other hand seems to protect the interests of other traders or the interests of non business institutions at times when the license’s act of carrying on different articles concurrently becomes prejudicial to their interests.

C. **Art 21(4)** states that any businessperson shall display a price list for his goods and services by posting such list in a conspicuous place in his business premise or by affixing price tags on the goods. This provision is designed to protect the consumers in the sense that, first of all the consumer will become aware of the price and more

<sup>14</sup> Reg. No. 14/1997 Art 3a

over, he can compare between the prices of the same good sold by different sellers and buy the one with a fair price.<sup>15</sup>

In addition, the ministry of Trade and Industrial may by notice determine the price list of certain goods or services. In this case the license should not only display the price list but sell his goods or services for the price fixed by the ministry.

D. **Art 21(5)** provides that any businessperson shall comply with what the nature of the business demands and render service, as directed by public notice. The ministry of trade and industry issues from time to time different notices to direct the activities of different business.

E. **Art 21(6)** states any businessperson shall display his business license in a conspicuous place with in the business premise. It serves as an evidence of legality of the commercial activity.

#### **F. Other laws**

In addition to the restrictions and prohibitions provided under Art 21 the licensee is also required to comply with other laws found in different legislation's. The list of prohibitions and restrictions under this article is not an exhaustive list it is rather indicative.

<sup>15</sup> Reg. No. 14/1997 Art 21 (4)

### **3.8. Consequences of failure to comply with prohibitions and restrictions**

As it has been mentioned previously, failure to comply will prevent the licensee not to continue in his business. Therefore, failure to comply with any of the above mentioned prohibitions and restriction amount to violation of the regulation.<sup>16</sup> And consequently entails suspension of a business license until the licensee rectifies his faults.

<sup>16</sup> Reg. No. 14/1997 Art. 21

## **Chapter 2 - Reference**

### **1. Pro. No. 67 /1989 - Registration and business licensing**

- Art - 2(2) - Trader (Business person)
- Art - 5 - Registration
- Art - 20(2) - power to issue business license
- Art - 21(1), (2) - Business license
- Art - 3(1)
- Art - 22 - (6) - application
- Art - 25 validity and renewal
- Art - 26 - suspension of license
- Art - 28 - cancellation of business license
- Art - 46 - 1, 2, 3, - penalty
- Art - 35 - inspection

### **2. Regulation No. 14/1989 - Registration and business licensing**

- Art - 2(2) - Regional power
- Art 5 - Registration

### **3. Regulation No. 13/1996 - Registration and business licensing**

### **4. Pro. No. 376/ 1996 - Renewal of licensing**

- Art 8(3) - fee (penalty for delay)

### **5. Commercial Code of Ethiopia**

- Art 5 - Commercial activities
- Art 10 - Business organization

## **Chapter 3**

### **Reference**

1. Civil code of Ethiopia - Art 1792 (force majeure).
2. Trade - Registration and licensing - Pro. No. 67/ 1989.
  - Art 3(1) - Scope of application
  - Art 5 - Registration
  - Art 20(4) - Requirement
  - Art 21(2), 4, 5 about business licensing
  - Article 21(3) a, b
  - Art 23(1) - Issue of business license
  - Art 25 - Validity and Renewal
  - Art 26 - Suspension of business license
  - Art 28 - Cancellation (Revocation)
  - Art 28(1), 2, 3, 4 and 5
  - Art 28(1) f,
3. Registration and licensing - Regulation No. 14/ 1989
  - Art 3 - Registration
  - Art 21(2) - application
  - Art 21(3) a, b
  - Art 21(4)
  - Schedule “c”
4. Pro. No. 376/ 1996 - Renewal of business licensing
  - Art 8(3) - fee - (penalty for delay)
5. Trade - Proc. No. 329/2003
  - Art 9 - Cancellation
  - Art 10 - unfair competition

6. Trade - Regulation No. 33/1999
  - Trade business - micro and small enterprises
  - development - To provide and develop
7. Regulation No. 13/1989
8. Business Law - 5<sup>th</sup> Edition - (book) By
  - David Kelly
  - Ann Holmes
  - Ruth Hayward
    - o Page - 170 (interest to protect)
    - o Page - 222 (Product)

## **CONCLUSION AND RECOMMENDATIONS**

### **5.1. Conclusions**

License is a permission given by a government authority to a person to do an act, which in the absence of such license would amount to illegal act. The primary purpose of licensing is to protect the public interest from deceptive business practices by unqualified or incompetent persons. Therefore, before a person engages in a given business activity he is required to obtain a business license from the appropriate authority. Acquisition of a business license is conditional on the fulfillment of certain requirement. In other words, before a business license is granted to a person, he has to show to the licensing agency his professional qualifications or competence to carry on the business activity for which he applied for a license. If the ministry becomes satisfied that the applicant has the required professional qualification or competence and fulfilled other formalities necessary for acquiring a license, then it will grant license to the applicant.

In Ethiopia prior to the enactment of the commercial registration and business proclamation No. 67/1997, license for different commercial activities had been given by different government institutions. However, according to the new proclamation, except for the issuance of business license to seven commercial activities provided under Art 20(1) the power to issue licenses for all other commercial activities is given to the Ministry of Trade and Industry. Only issuance of license for seven commercial activities is given to other government institutions.

Once a person has acquired a business license, he is required to act within the scope of the field of activity for which he is licensed and also duty bound to observe rules and regulations laid down by the government in order to regulate business activities. Failure to comply with these duties may entail the suspension or revocation of a license. Therefore, the licensee should carry out his duties diligently and by so doing he can maintain the validity of his license. Finally though licensing is interested primarily in safeguarding public interest, it should have to be utilized wisely lest it would not harm private business interests. As a result the legislature has to provide adequate protective devices to safeguard the interest of individual businessperson from unreasonable and capricious acts of licensing agencies.

## **5.2. Recommendations**

Pursuant to the commercial regulation and licensing council of ministers regulation the ministry of trade and industry may refuse to renew a license at times when the licensee has failed to comply with certain rules and regulations nevertheless, the law doesn't provide a time limit within which the licensee should comply with those rules and regulations and reapply thereafter, under certain circumstances this may have a negative effect. A licensee whose application for renewal of a license has been rejected, for instance, for reasons of causing damage to consumers by carrying different commercial activities concurrently may still continue to carry on those commercial activities concurrently. Now in this case unless the licensee is compelled to carry on those activities at separate places within a given period of time, he may seriously injure consumers.



In addition, nothing has been provided as to the actions that has to be taken by the ministry at times when the license whose application for license renewal has been rejected fails to rectify his faults. In other words, nothing has been mentioned both in the proclamation as well as in the regulation about the consequences that failure to renew a license would give rise to. Therefore, this writer recommends that a specified time limit must be provided within which the licensee should rectify his faults. Furthermore, the legislature has to provide clearly the actions that has to be taken by ministry at times where the license whose application rejected fails to rectify his faults.

Further more, the provisions dealing with suspension are confusing in the sense that they seem to convey a message that the license will be suspended summarily until such time the license rectifies his failures. However, the intention is that save for certain exceptional cases where a license will be suspended summarily, suspensions will occur only after the license has been given notice to rectify his failures with in a specified period of time.

So, this writer recommends that those confusions should be avoided. As regards revocation the legislature preferred to use the term “cancellation” instead of “revocation”. However, it would be more appropriate if it would have used that term revocation.

## **CHAPTER FOUR**

### **Introduction**

This chapter deals with the concepts of suspension and revocation of a business license. The licensee's failure to comply with certain obligations provided by law may give rise to suspension or revocation.

### **4. Suspension and revocation**

The administrative agency entrusted with the power of granting licenses is also at the same time authorized to suspend or revoke license. As it has been said repeatedly, the licensing agency is endowed with the power of regulating business. And in order to make its regulation effective it exercises different methods of regulation at different levels. Firstly, through license issuance process the agency screens out unqualified and incompetent businesspersons. Secondly, once a license has been issued the license is required to exercise his business within the limits provided by the legislature and must comply with other rules and regulations issued by the agency.

However, where the license has been found acting out side the scope of the field of activity for which he has been licensed or has been found violating the statutes in any way, then the agency further exercise another mechanism of control in order to secure compliance to its rules and regulations. And these are suspension or revocation.

Suspension in its crude sense means "a temporary stop, a temporary delay; interruption, or cessation."<sup>1</sup> It follows that suspension of a right or privilege refers to the act by which a party deprived of the exercise of his right or privilege for a time; a temporary stop of a right, or privilege, a partial extinguishment for a time as contrasted with a complete extinguishment where the right or privilege is absolutely dead.<sup>2</sup> The licensing agency by employing total suspension may temporarily prevent the licensee from carrying on his activities until such time the latter complies with the requirement laid down by the agency.

On the other hand, "revocation means the recall of some authority, or things granted or destroying or making void of some deed that had existence until the act of revocation made it void."<sup>3</sup> Hence it refers to act of the licensing agency of taking back the privilege or permission it granted to the licensee. It, in other words means, absolute withdrawal of privilege granted to the license holder.

The difference between suspension and revocation is that while the former temporarily takes away the privilege granted to the licensee, the latter on the other hand, permanently excludes the licensee from exercising the privilege which has been given to him. Revocation has the effect of extinguishing the privilege granted to the license holder, suspension differs from revocation, because a suspended privilege is susceptible of being revived, which is not the case when the privileges is extinguished.<sup>4</sup>

<sup>1</sup> Black Law Dictionary, Bryan A. Garner English Edition - 1990 West Publishing page - 1487, 1346.

<sup>2</sup> Cited at note 13, Art. 26

<sup>3</sup> Cited at note 13, Art. 26

<sup>4</sup> Ibid, art. 25 & 26

#### **4.1. Nature of successful regulation**

Once again let us say that, the pillar interests involved in the regulatory regime of government are private and public interest. In order to carry on this regulatory function the administrative agencies are endowed with the discretionary powers.<sup>5</sup>

In the field of licensing the conflict which the exercise of this discretion must resolve is between the protection of the interest of the individual in his business or profession and the protection of the health, morals or welfare of the community arising from improper practice thereof.<sup>6</sup> In reality, the extent to which the administrative agency effectively reconciles these two pillar interests, i.e., be responsive to the interests of the private citizens and on the other hand be responsible to the interest of the public at large determines the degree of success or failure of the agency in its regulation. The whole discussion then revolves around the issue that how should the agency exercise effectively and reasonably the discretionary power granted to it. There is a long-standing controversy between scholars concerning the nature of an effective and responsive mode of administration and regulation. In other words, there is a long history of barren disputation with in regulatory agencies and more recently among scholars or regulations between those who think that corporations will comply with the law only when confronted with tough sanctions and those who think that corporations will comply with the law only when confronted with tough - sanctions and those who believe that gentle persuasion works in securing business compliance with the law.

<sup>5</sup> Civil Code of Empire of Eth. 1960 Agency - Art. 2199

<sup>6</sup> Pro. No 67/1997 Art. 26(1a)

Therefore, the controversy goes on between those who advocate that administrative agencies in order to achieve their goal of regulation should act towards business persons with tough sanctions and those who advocate the opinion that if the administrative agency is to achieve its goal of resolving the conflicting interests which are the subject of administrative regulation, then it has to endeavor to persuade business persons to secure compliance with its rules and regulations.

#### **4.2. Safety devices for the protection of the license**

Under the heading, "Nature of successful regulation" we discussed in general about the qualities that an effective and responsive system of regulation needs to possess. Under the present heading, however, our focus is on the protective devices that are available to a license holder in case when he risks the danger of suspension or revocation.

##### **4.2.1. Granting of second chance**

As we have said previously, suspension or revocation entails a very serious consequence to the licensee. For instance, in highly volatile competitive market. Taking into consideration the gravity of consequences of suspension or revocation some scholars argue that "liability to revocation and even to suspension is a clumsy disproportionate device, only justified when nothing else will do." The lesson is clear; before the administrative agency resorts to suspension or revocation it has to take all possible means available in order to make the licensee comply with the regulations.

The license holder who has violated administrative regulations should be given a second chance to rectify his fault. This is in general the rule adopted by many countries. For instance, sec. 9(b) of the administrative procedure Act of the U.S.A. grants licensees who have violated agency standards of conduct a second chance to achieve compliance before the institution of agency proceedings leading to revocation or suspension. Therefore, the primary safety device available for the protection of the interests of the licensee is the granting to him of second chance to avoid his mistakes.

#### **4.2.2. Due Process of Law**

Due process of law implies,

*The right of the person affected there by to be present before tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard by testimony or otherwise and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved<sup>7</sup>.*

The essential elements of due process of law are notice and opportunity to be heard<sup>8</sup>. Therefore, an individual should not be deprived of his life, liberty and property without being given notice and opportunity to be heard and defend his rights. Consequently, "it is recognized that even though a license is suspended or revocable at will, a revocation without notice and opportunity to be heard is a violation of due process of law." It should be noted, therefore, that notice and opportunity to be heard are the essential procedural safeguards for the protection of the interests of the licensee.

<sup>7</sup> The Constitution of the Federal Democratic Rep. of Eth. Pro. No. 1/1995, H/R

<sup>8</sup> The Constitution of Federal Democratic Rep. of Eth. Pro. No. 1/1995 Art. 20 & Art. 41

However, some writers counter attack this position on the ground that since a license is privilege and not a property right the licensee should not benefit from the protection of due process of law. They argue that though the government should not take away property of a person without due process of law, it could suspend or revoke a privilege it granted to a person without due process of law and there is no cause in it. Therefore, they say, the states power of revocation is not hampered by the "due process of law" clause in the constitution<sup>9</sup>.

Nevertheless, the vast majority of scholars are against this latter view. They suggest that the dicotomy into privilege-right is unhelpful conceptualism. And argue that even though it is generally asserted that licenses are not property, they confer valuable rights<sup>10</sup>. Though a liquor license, for instance, is, technically, not property in the sense that it can be taken away by the state without compensation, yet under the statute it is a valuable right and process all other characteristics of property. And once a license has been issued and an investment has been made, both license and property rights are in similar situation, i.e.; the loss of value of assets may result from revocation of a license just as deprivation of property rights. In fact a license to engage in a legitimate and useful business represents a property right, which cannot be taken without due process.

Taking into consideration the opinion that license to engage in a lawful profession, trade or occupation confer valuable rights, it has been held that such licenses may not be revoked without giving the

<sup>9</sup> Pro. No 1/1995 The Constitution of Eth. Art 20

<sup>10</sup> Pro. No 1/1995 -The Constitution of Eth. Art. 40

licensee notice and such a hearing as will satisfy the requirements of due process of law. In addition, these writers, i.e., who consider license as property rights, further substantiate their position on the basis of the function of notice and hearing. Notice provides the means by which the agency informs the licensee of the regulation or clarifies it by interpretation; and through this notice the administrative agency sets out in writing the objectionable conduct with which the licensee is charged. Hearing, on the other hand, is required to ascertain and verify facts when there are controverted facts relating to past conduct.

Consequently, it has been argued that since the issue in suspension or revocation cases is usually whether the licensee has violated a statute or a regulation, the testimonial adversary process of a hearing is uniquely suited to ascertaining facts concerning alleged past violations. Therefore, statutory provision requiring cause for the revocation of licenses carry with them, by implication, the right to notice and hearing<sup>11</sup>.

Owing due respect to the forgoing discussion and, on top of this, taking into consideration the severity of the consequences of suspension or revocation this writer is of the opinion that it is quite reasonable that a license should be suspended or revoked only after the licensee has been provided with notice and hearing lest he may be endangered by unreasonable or capricious conduct of administrative agencies. And the mechanisms utilized frequently are granting notice and conducting of hearing before a license has been suspended or revoked. This is the general practice in the United States of America.

<sup>11</sup> Pro No. 67/1997 Art. 28(3)



However, there are exceptional situations under which the licensing agency may summarily suspend or revoke a license. As it has been said time and again the primary concern of the administrative agency is the protection of the health and safety of the public interest, the licensing agency will summarily suspend or revoke the license.

The public interest must not only require revocation of the license but an immediate revocation without notice and opportunity to comply. This situation arise only in emergencies where any continued activity seriously endangers public safety or welfare<sup>12</sup>.

Therefore, a license may be revoked summarily under exceptional circumstances where the harm to "the license from revocation without on opportunity to be heard is out weighed by the damager to the public interest from continued malpractice and the resultant need for immediate protection of the public.

Furthermore, in chapter one we have said that entrance into a given business activity may be restricted on the ground of convenience or necessity.

In this case obviously, notice and an opportunity to comply does serve no rational purpose.

In our next discussion we will pass on to examine the reasons and effects of suspension and revocation and the protective devices provided to safeguard the licensee by the proclamation.

<sup>12</sup> Pro. No. 67/1997- Art. 26 (1/a)

### **4.3. Suspension**

#### **4.3.1. Reasons for suspension**

The reasons that may give rise to suspension are stated under Art 26 of the proclamation. This article provides that, the appropriate authority may until such time as the shortcomings indicated below are rectified suspend a business license, where the license holder<sup>13</sup>.

- a) Has failed to maintain the standards of health and sanitary condition, environmental protection, safety measures and the quality of his product or service, as confirmed by the concerned government institutions.
- b) Has failed to supply, accurately and on time, the information requested by the appropriate authority pursuant to this proclamation, or
- c) Has otherwise violated this proclamation or the regulations.

These are the obligation set out by the legislature which are required to be observed by the licensee and violation may give rise to suspension of license. And now we will treat each of them separately.

#### **1. Failure to maintain the standards of health and sanitary conditions**

The ministry of health shall have the power and duties to determine standards to be maintained by health services. And it undertakes the necessary quarantine controls to protect public health<sup>14</sup>. In addition, the commercial registration and business licensing

<sup>13</sup> Pro. No 67/1997-Art 26

<sup>14</sup> Proclamation No. 67/1997 Art. 26- (1a)

proclamation provides that the appropriate authority or the concerned government institutions may conduct follow-up and inspection work in order to ensure the observance of the conditions subject to which any business license is given. And when the ministry of health proves that the licensee has violated those conditions, it communicates the matter to the appropriate authority. And the latter on the basis of the confirmation of the former will order the suspension of the license.

## **2. Failure to take environmental protection and safety measures**

The former ministry of natural resources development and environmental protection had been empowered to follow-up the implementation of treaties on environmental protection to which the country is a party, and to promote international cooperation with respect to environmental protection<sup>15</sup>. However, under the existing law, the rights and obligations of the ministry of national resources development and environmental protection are transferred to the environmental protection authority.

The licensee, therefore, has to comply with the environmental protection laws, however, if the environment protection authority confirms to the appropriate authority the license's non-observance of the environmental protection laws, then the latter will suspend the license.

<sup>15</sup> Proclamation No 1/1995. the cons. Of the FDRE Environment rights Art. 44

### **3. Failure to maintain the standards of the quality of products**

The Ethiopian standardization authority is authorized to prepare compulsory Ethiopian standards relating to goods, practices and processes. And also it is empowered to examine and test goods.

Practices and processes to ensure conformity with the standards, and also to enter at all reasonable hours, in to factories, business premises or other relevant places to ensure by inspection and investigation whether goods, practices and processes conform to the standards.

The businessperson on the other hand is duty bound to allow inspectors to enter in to his premises and to provide them on request samples of his products. And where the quality of the products of services of the licensee has been found to be below standard, then the standardization authority confirms the same to the appropriate authority and the latter will certainly order the suspension of the license.

### **4. Failure to supply accurate information**

The appropriate authority may conduct follow up and inspection work to ensure the observance of the conditions subject to which business license is given. And to discharge this function it may call up on license holders to submit information regarding their operations either periodically or as otherwise specified.

The license holder in this case is required to provide accurate information. But where it has been found that the licensee supplied

inaccurate information, the appropriate authority will suspend the business license.

#### **5. Failure to supply information in due time**

The license holder is required not only to submit accurate information, but also to submit it in due time, i.e. "within the specified time limit" set by the appropriate authority.

#### **6. Violation of the proclamation and the regulation**

This provision reminds us that the licensee should have to comply with other rules of the proclamation and the regulation and violation in any other manner entails suspension of a license.

Example

**Addis Ketema Sub City  
Trade and Industry Office**

| No | Title                   | Year |      | Remark                                 |
|----|-------------------------|------|------|--|
|    |                         | 1999 | 2000 |  |
| 1  | Suspension              | 27   | 49   | Copy right problem, holding, pollution |
| 2  | Cancellation Revocation | 232  | 369  | Not Renewal and Bankruptcy             |

#### **4.3.2. Effects of suspension**

As it has been said at the beginning of this chapter suspension of a license results in the temporary cessation of the business activity of a license holder. A person whose has been suspended for the

reasons stated hereinabove is prohibited to exercise his business activity until such time he rectifies his failures.

#### **4.3.3. Protective devices**

Art 26(1) first paragraph provides that the appropriate authority, may until such time as the shortcomings indicated...are rectified, suspend a business license<sup>16</sup>...And sub-article 2 of the same article states that where a business license is suspended under sub-article one of this article, the appropriate authority shall notify the license holder in writing the reasons of suspension and the measures to be taken to rectify the shortcomings within a fixed period of time. These two sub-articles talk about suspension of a business license and the actions to be taken by the licensee during suspension.

These articles are misleading in the sense that it seems that the licensee is required to rectify his failures after his business license has been suspended, i.e., after his business has been temporarily closed. But the idea behind, it seems, is that before the license is suspended, the appropriate authority shall require the licensee to rectify his shortcoming within a given period of time. However, where the licensee fails to rectify his shortcomings within that given period of time, then the authority shall suspend the license, i.e., close the business. This is the rule and it is only in exceptional cases that the license will be suspended without primarily giving to the licensee an opportunity to rectify his shortcomings.

<sup>16</sup> Proclamation No 67/1997 Art. 26(1) and (2)

So, the proclamation protects the interest of the licensee by giving him second chance to comply with the requirements of the law. This is one of the best and the primary procedural safeguard available to the licensee. It is best because, primarily, by rectifying his shortcomings the licensee can avert the danger of suspension. Secondly, the fear of suspension compels the licensee to respect the conditions under which license is granted and the effect of this is the protection of public interest. "...the threat of prosecution or of suspension is as effective a means, in many cases, for protection of the community as actual prosecution or suspension."

In this case the appropriate authority is required to give written notice to the licensee specifying the reasons of suspension, i.e., the failures of the licensee, the measures that has to be taken to rectify the failures and the time limit with in which the licensee is required to act.

Despite the fact that the licensee is given second chance to rectify his failures, under exceptional circumstances where the concerned government institution confirms to the appropriate authority that the continued exercise of the business is dangerous to public health and safety or to the national economy, the appropriate authority shall temporarily close the business immediately<sup>17</sup>. In other words, the authority may summarily suspend the license where the exercise of the business is highly prejudicial to the public.

Nevertheless, the proclamation does not grant the license holder an opportunity to be heard before his license has been suspended. It

<sup>17</sup> Pro. No. 67/1997 Art. 26/1 (a)

has been stated that an opportunity to be heard is one of the two essential elements of due process of law. And it has been argued that though a license is not a property, since it confers on a valuable rights it should not be suspended or revoked without due process of law.

#### **4.3.4. Judicial review**

A licensee whose license has been unreasonably suspended can appeal to the court. Though, under the new proclamation up to the day this paper is prepared there is no practical case on this issue, i.e., appeal to the court against the decision of the ministry of trade and industry suspending a license, there had been such a practice under the old laws. Therefore, judicial review is the other protective device available for the protection of the licensee.

#### **4.4. Revocation**

The proclamation does not use the term revocation, it instead uses the term cancellation. However, cancellation is not the appropriate term. Because it is mainly applied in relation with a contract. License in its strictosensu is not a contract between the holder and the authority. It is rather a privilege granted by the authority. Therefore, the legislature should have used the appropriate term revocation instead of cancellation.

##### **4.4.1. Reasons for revocation**

###### **4.4.1.1. Fraud**

The appropriate authority may revoke a license where the holder there of is found to have obtained or renewed his license by



submitting false information. Fraud committed by the licensee in acquiring or renewing a license does not only give rise to revocation but also entails both financial punishment and imprisonment.

The licensee may obtain a license by supplying false information, for instance, by supplying forged documents. And if at a later point the appropriate authority becomes aware that the license holder obtained the license by supplying false information, then this gives the authority a valid ground to revoke the license. In addition, the licensee might have obtained a business by supplying genuine information but he might have renewed his license by supplying false information, for instance, supplying forged documents evidencing that he has paid his income tax. In this case too, the licensing agency will have a reasonable ground to revoke the license.

Both situations entail similar consequences, i.e. revocation of the license, and punishment "with fine equal to double the revenue estimated to have been obtained by him up to the time when it was discovered that he has been licensed or renewed his license by using false statement and imprisonment from 7 up to 10 years<sup>18</sup>.

#### **4.4.I.2. Abusing the privilege granted**

The licensee may abuse his license and that may give rise to revocation. He may abuse his license by using the license for a purpose other than that for which it was issued. For instance, a person holding a license to operate a pharmacy may be found using the same license for clinical service. Furthermore, the licensee may

<sup>18</sup> Proclamation No 67/1997 Art. 46(2)

abuse his license by using it for improper commercial activities<sup>19</sup>. It refers to the situations where, a licensee, for instance, holding a license for pharmacy may be found using the same selling hashish.

#### **4.4.1.3. Committing faults repeatedly**

The appropriate authority may revoke a license when the license holder has repeatedly committed the faults specified in article 26(1) of the proclamation<sup>20</sup>. Those faults are those which result in suspension of a license. And where the appropriate authority concludes that the licensee has committed those faults several times, it will revoke the license once and for all. This implies that the licensing agency will record each of the faults of the license holder. However, the issue as to how many times the faults should be repeated so as to justify revocation is not clear. It seems, it is a matter left to the discretion of the agency.

#### **4.4.1.4. Bankruptcy or ceasing to operate**

When the licensee is declared by a court of law that he has become bankrupt or when he ceased to operate his business for any other reason, the appropriate authority will revoke the license<sup>21</sup>.

The reason seems that the licensing agency grants a license with the intention that the privilege granted will be exercised. However, bankruptcy seems to be legal.

<sup>19</sup> Commercial Code of Ethiopia Art. 5

<sup>20</sup> Proclamation No 67/1989 Article 26(1)

<sup>21</sup> Proclamation No 67/1997 Art. 28

## Example

### Addis Ababa City Trade and Industry Bankruptcy of Business Organization

| No    | Year | Title                     | Registered<br>No | Bankruptcy | Capital       |
|-------|------|---------------------------|------------------|------------|---------------|
| 1     | 1997 | • Private Limited company | 1057             | 10         | 2,731,000.00  |
|       |      | • Share Company           | 41               | 1          | 2,500,000.00  |
| 2     | 1998 | • Private Limited Company | 951              | 1          | 13,970,000.00 |
|       |      | • Share Company           | 31               | 4          | 560,000.00    |
| 3     | 1999 | • Private Limited Company | 1101             | 10         | 270,000.00    |
|       |      | • Share Company           | 23               | 5          | 6,100,000.00  |
| 4     | 2000 | • Private Limited Company | 207              | 1          | 800,000.00    |
|       |      | • Share Company           | 13               | --         | --            |
| Total |      |                           | 3424             | 32         | 51,661,000.00 |

#### 4.4.I.5. Failure to renew a license

The other reason that may cause the revocation of license is the license holder's failure to renew his license in due time<sup>22</sup>. It is only under exceptional circumstances where the license holder has failed to renew his license for reasons of force majeure that his license will be protected from the risk of revocation<sup>23</sup>. The proclamation never attempts to define the term, "force majeure" but it refers as to the definition of the term provided article 1792 of the civil code.

<sup>22</sup> Proc. No 67/1997 Art. 25

<sup>23</sup> Proc. No 67/1997 Art. 28 (1 f)

#### **4.4.2. Effects of revocation**

Revocation has the effect of absolutely taking away the privilege granted to the licensee. Pursuant to the proclamation the person whose license was revoked has to obtain a new business license after the lapse of one year the day when his license was revoked and by paying an amount which is twice the regular fee charged for a new trade licensee<sup>24</sup>. The same applies to a businessperson who has voluntarily ceased his business, unless he returns his license to the appropriate authority within the normal license renewal period of six months.

#### **4.4.3. Protective devices**

##### **4.4.3.I. Notice**

It is provided in the proclamation that the appropriate authority, before deciding to cancel (revoke) the license for the reasons specified in art 28(1) of the proclamation shall require the license holder by letter sent to his registered address, or as may be necessary, by any mass media to submit his written opinion on the anticipated cancellation (revocation.<sup>25</sup>) Therefore, before the license is revoked the licensee will be provided with an opportunity or given notice to submit whatever opinion, more specifically, whatever reasons he might have to prevent the anticipated revocation.

The license shall, however, be revoked where the license holder has not submitted his opinion within thirty days from the day the letter was received by him, or was called through any mass

<sup>24</sup> Proc. No 67/1997 Art. 28 (4a)

<sup>25</sup> Proc. No 67/1997 Art. 28 (1)

media<sup>26</sup>. Therefore, before the license is revoked the licensee will be provided with an opportunity or given notice to submit whatever opinion, more specifically, whatever reasons he might have to prevent the anticipated revocation.

The license shall, however, be revoked where the license holder has not submitted his opinion within thirty days from the day the letter was received by him, or was called through any mass media. A thirty days notice is quite reasonable and provides the licensee with sufficient time to submit his opinion. Failure, on the other hand amounts to refusal and revocation will come in to the stage.

There may be exceptional circumstances where the appropriate authority may dispense with the act of giving notice prior to revocation and may forthwith suspend the license until it decides to revoke the license. It is stated that where the concerned government institution has confirmed that the business is dangerous to public health and safety or to the national economy, a business license shall be suspended and the business closed until such time as the appropriate authority decides to revoke the license<sup>27</sup>. Here, notice will be given only after the business has been closed temporarily. The reason is that continued exercise of the commercial activity will seriously injure the public interest.

#### **4.4.3.2. Hearing**

The proclamation provides nothing as to whether the appropriate authority may hold a hearing or not. Hearing, as it has been said earlier on, is necessary to resolve controverted facts or to clarify

<sup>26</sup> Proc. No 67/1997 Art. 28 (3)

<sup>27</sup> Proc. No 67/1997 Art. 28 (3)

unclear facts. And there may arise a controversy of facts between the opinions submitted by the licensee and the faults alleged to have been committed by the licensee. In addition, the appropriate authority may be faced with certain unclear facts. Therefore, at times when the appropriate authority is faced with certain controverted facts or unclear facts it may hold a hearing. And the purpose of holding a hearing under the situations already mentioned is to arrive at a reasonable decision. Hence, although the appropriate authority is not expressly authorized to hold a hearing, it seems reasonable, however, to argue that the appropriate authority can hold a hearing whenever the need arises.

#### **4.4.3.3. Judicial review**

The other protective device available for an aggrieved licensee as has been said repeatedly is judicial review. Though, Ethiopia does not presently have an administrative procedure code dealing with the issue of judicial review of administrative decision, there is, however, a practice that courts frequently review decisions rendered by administrative agencies on appeal by the aggrieved party.

**May 17, 2000**

## **Assignment on Private International Law**

**Que. No 1.** Give at least definitions of Private International Law. Identify difference and similarities between Private International Law and Conflicts of Laws.

### **Answer**

#### **1. Private International Law -**

- Is a part of International Law.
- It is also part of domestic law.
- It regulates relation in particular foreigners, citizens and states.
- It is in dependent branch of law.
- It is a body of rules.
- It has judicial regulations and it is a science.
- It has universal recognized principle i.e. for contract of sale tort and family law (marriage)
- It has international civil procedure for foreign judgment.

#### **1.1. Conflict of law**

- It is to solve dispute of sale contract.
- It protects equality of human beings.
- It is a grounds of rights of different citizen/recognition of foreign nationals.
- Conflict is between citizen and companies.
- It solves legal capacity (marriage).
- It is recognition of legal personality.

- We study because of economic, cultural and trade relations of people to solve.
- In general it regulates private individuals, citizens, legal relations and states.
- Conflict of law, the statuist theory which emphasized the citizenship or personal law of the parties.
- The modern theories as to the nature of conflict of laws were developed in the 19<sup>th</sup> and 20<sup>th</sup> centuries and by large the emphasis was on territoriality. It was accepted in all legal systems that court would have to consider the effect of a foreign element and in certain cases apply the law of another state.

## **1.2. Similarities:-**

- Between private international law and conflict law are:-

1. Conflict arise between each states i.e. a) sovereign state

b) Regional state

2. Conflict of law is private international law.

3. Conflict - is the recognition of legal personality.

4. Both are similar.

**Que. No 2** Expose exhaustively similarities and differences between Private International Law and Public International Law.

## **Answer**

### **2.1. Private International Law**

- It is to solve dispute of sale contract.



- It is a part of domestic law.
- It is equality of human beings.
- It regulates relation in particular citizens, foreigners, and states.
- It has judicial regulations and it is a science.
- It has universal recognized principle. I.e. for contract, property, tort and family law (marriage).
- It is a grounds of rights of different citizen/recognition of foreign nationals.
- It has International Civil Procedure for foreign judgment.
- Conflict between citizen and companies.
- It is recognition of legal personality, and legal capacity (marriage).
- It has source i.e. custom, judicial decision legislative acts, international treaties and opinion of legal scholars.

## **2.2. Public International Law**

1. It consists of certain rules of conducts which modern and civil civilized state regard as being binding on them in their relations with one another.
2. The body of rules and principle of actions, which are binding up on civilized states.
3. It is the body of customs, treaty rules and convention.
4. It is the body of law.
5. It is process known as recognition and its highly essential for the acquisition of international personality.
6. International law as a sources.

i.e. - Judicial decision/resolution

- Customary
- Treaty
- General principle of international law and opinion of legal scholars

7. Public International Law has universal declaration and fundamental human rights protection.
8. Recognition is considered to be one of the attributes of statehood practice of the state de facto recognition is provisional. It is regarded as a prelude to de jure recognition.
9. National or international is to improve the condition of human beings severally and collectively

**Que. No 3.** What Private International Law is composed?

Compare with available concepts as regard to the subject matter of the modern Private International Law.

### **Answer**

#### **3.1. Concepts of Private International Law**

**It has:-** 1. Material rules

2. Unified material rules
3. Conflict of rules
4. Unified conflict of rules

#### **3.2. Actually of the modern Private International Law are:-**

1. International Process.
2. The increase of number of emigrants.

3. The negative impact of scientific progress.
4. An safe air.
5. The increase of subsequent dependent of one state over other.

**Que. No 4. Compare and contrast on**

1. Ethiopian Draft - Federal Rules of Private International Law Proclamation draft from art. 1 up to Art. 102
2. Italian Law (conflict of Laws) from Art. 1 up to Art. 74

The compare and contrast of the laws are as follows.

| No | Title                           | Ethiopian P.I. Law Draft                           | Italian Conflict Law  | Art                    |                 |
|----|---------------------------------|--|---|------------------------|-----------------|
|    |                                 |  |   | Ethiopian              | Italian         |
| 1  | Jurisdiction                    | Ethiopian Court                                    | International convention and agreement of foreign courts, Italian Courts        | Art 1(a)<br>Art 18     | Art 1 & 4       |
| 2  | Preceding                       | Ethiopian Law                                      | A plea of his pendens   | Art 3                  | Art 7           |
| 3  | Prejudice                       | Ethiopian Law                                      | Italian Law   | Art 3                  | Art 17          |
| 4  | National persons                | Nationality, domicile or residence - Ethiopian Law | Governed by domestic Law  | Art 4                  | Art 20          |
| 5  | Marriage                        | • By Law governs his or her status                 | • National law<br>• Law of Place where it was celebrated<br>• Marriage full age | Art 48<br>Up to Art 52 | Art 26 & Art 28 |
| 6  | Filiations                      | Personal Law of Ethiopia                           | • Childs national Law<br>• Adoption by National Law                             | Art 62<br>and Art 63   | Art 33 & Art 38 |
| 7  | Succession                      | Ethiopian Law                                      | National Law  | Art 67                 | Art 46          |
| 8  | Capacity                        | Ethiopian Law                                      | National Law  | Art 48                 | Art 44          |
| 9  | Property                        | Ethiopian Law                                      | Possession - right in rem governed by the law of state.                         | Art 52 and Art 72      | Art 51          |
| 10 | Contractual obligation          | Governed by Law                                    | Rome convention   | Art 75                 | Art 57          |
| 11 | Liability                       | Ethiopian Law                                      | National of one state   | Art 85                 | Art 62          |
| 12 | Enforcement of foreign judgment | Convention foreign judgment may not recognized     | Voluntary jurisdiction.   | Art 88                 | Art 67          |
| 13 | Service of summons              | Ethiopian Law                                      | Public prosecutor   | Art 3                  | Art 71          |

## Conclusion

**Draft of Federal Ethiopian Private International law shall be:-**

1. It has international concepts.
2. It has legal personality.
3. In family law the wife and husband relation (marriage status)
4. It has fundamental human rights principle.
5. Law of sales and has other legal principle/legal systems and rules.
6. In general it shows how to solve legal dispute and it conflicts.
7. The draft of the Federal Ethiopia Private International Law shall be constructed in better way.
8. Italian Conflict of Law is different from the draft of Ethiopian Private International Law.

**Que. No. 5 One case on Private International Law and the substantiate shall be:-**

- Case** -
1. On file on 1272/77  
- Tahasas 4 - 1978
  2. Appeal case on Ethiopian National  
(nationality)

- Journal of Ethiopia law - volume 15 - page 1-6 Feb. 1,1992

- a) **Fact** - On marriage i.e. Wife and husband relation
- Appeal case- the respondent was married to the Ethiopian husband on Family Law.
  - >=fAaA© vM eLNv< >”f=/ %"<fc >N' c?f :?&f %}cO %o'E "<d'@ ' "

- b) **Issue** - Marriage (nationality)
  - Women's right on nationality concept appeal on  
foreigner marriage and appeal case.
- c) **Holding** - Execution and revocation of the employment contract and terminated the work permit.
- d) **Volume** - (Marriage) wife and husband relation.
- e) **Connecting factors** - Respondent to be reinstated in her job, because this reinstatement is prohibited by Art 14(1) of proclamation No 64 of 1975 and the directive issued by the ministry of labour and social affairs in Tahasas 1974.
- f) **Reasoning** - Court supported by law of art 14(1) of Proclamation No. 64 of 1975 and Appeal Procedure.

**Que. 5 - 2<sup>nd</sup> Case on private International law (conflict law)**

Case - a) On file civil appeal supreme imperial court

b) Appeal case

c) Journal of Ethiopia Law - Volume - 1

- a) **Fact** - the appellant, the husband, is now residing in Ethiopia and has had residence here forever a year, he is employed on a contract by the Ethiopian airlines Inc. he is possession of resident's identify card issued by the ministry of the interior.

- Nationality, domicile and residence.

- b) **Issue** - dissolution of marriage (divorce)
- c) **Holding** - domicile in Ethiopia should be established before the courts of Ethiopia can take cognizance of a sue for a dissolution of marriage, and the appellant is not domiciled in Ethiopia.

- Court - confirmed the judgment of the High Court and dismiss the appeal.
- d) **Volume** - wife a husband relation
  - Dissolution of marriage
- e) **Connecting factors** - Civil Code of Ethiopia Art. 1114 and Art. 1117 (dissolution of marriage and divorce)
- f) **Reasoning** - Supreme imperial court has supported by Civil Code of Ethiopia and Civil Procedure of Ethiopia for appellate decision.

### **Reference Books**

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4. Italian Conflict Law Art. From 1 - 74.
5. Civil Code of Ethiopia.
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### ***ASSIGNMENT ON PRIVATE INTERNATIONAL LAW***



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